

STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:)	
)	
UNITED CAPITAL, INC., d/b/a)	TDFI No. 08-42-C
UNITED CAPITAL MORTGAGE)	
)	
Respondent.)	

EMERGENCY CEASE AND DESIST ORDER

The Commissioner of the Tennessee Department of Financial Institutions (the “Commissioner”), having determined that he has reason to believe that United Capital, Inc., doing business as United Capital Mortgage (the “Respondent”), has violated and is violating the Tennessee Residential Lending, Brokerage and Servicing Act of 1988, Tenn. Code Ann. §§ 45-13-101, *et seq.* (the “Act”), and that extraordinary circumstances warrant immediate action, hereby issues the following EMERGENCY CEASE AND DESIST ORDER pursuant to Tenn. Code Ann. §§ 45-1-107(a)(4) and (c), and Tenn. Code Ann. § 45-13-116.

JURISDICTION AND IDENTIFICATION OF THE PARTIES

1. Pursuant to Tenn. Code Ann. § 45-1-104, the Tennessee Department of Financial Institutions (the “Department”) is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45 of the Tennessee Code.

2. Tenn. Code Ann. § 45-1-107(a)(4) provides that, in addition to other powers conferred by Title 45 of the Tennessee Code, the Commissioner has the power to

order any person to cease violating a provision of Title 45 of the Tennessee Code or lawful regulation issued thereunder, and Tenn. Code Ann. § 45-13-116 provides that if, after notice and opportunity for a hearing, the Commissioner finds that a person has violated the Act or administrative rule issued pursuant to the Act, the Commissioner may take any or all of certain actions, one of which is to order the person to cease and desist violating the Act or any administrative rule issued pursuant to the Act.

3. Pursuant to Tenn. Code Ann. §§ 45-1-107(c), notice and opportunity for a hearing shall be provided in advance of the Commissioner issuing such an order, except that in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action but shall promptly afford a subsequent hearing upon application to rescind the action taken.

4. The Respondent is a Tennessee for-profit corporation, with its principal office located at 2035 Lakeside Centre Way, Suite 140, Knoxville, Tennessee 37922, and its registered agent is Jack Williamson, 2035 Lakeside Centre Way, Suite 140, Knoxville, Tennessee 37922.

5. The Respondent is currently, and was at all times relevant hereto, registered with the Department under the Act as a mortgage lender and a mortgage loan broker, having been issued certificate of registration number 2804 pursuant to Tenn. Code Ann. § 45-13-119(b).

FACTUAL ALLEGATIONS

6. The factual allegations contained herein are based upon information that the Department has learned and gathered through communications with a representative of the Respondent.

7. As of March 7, 2008, there were at least fifteen (15) residential mortgage loans which the Respondent had recently closed, the funding for eight (8) of which is past due, and the funding for the remaining seven (7) is now due or will be due within days.

8. The Respondent has lost its source of funding and does not have the ability, at present or in the foreseeable future, to fund any of the loans that have closed.

CAUSES OF ACTION

9. Tenn. Code Ann. § 45-13-108 provides that the Commissioner may suspend or revoke any license or registration issued under the Act if the Commissioner finds that the licensee or registrant is guilty of any of certain enumerated acts, each of which thus constitutes a violation of the Act.

10. Pursuant to Tenn. Code Ann. § 45-13-108(a)(2), conduct of a manner which would warrant the denial of an application for a license or registration under the Act is a violation of the Act, and Tenn. Code Ann. § 45-13-105(a) provides, among other things, that in order for an applicant to qualify for a license or registration under the Act, the Commissioner must find that the applicant has the financial responsibility to warrant the belief that the business of the applicant will be operated lawfully and within the purposes of the Act. The factual allegations contained herein demonstrate that the Respondent does not possess the financial responsibility required by the Act.

11. Pursuant to Tenn. Code Ann. § 45-13-108(a)(9), failure to disburse funds in accordance with a written agreement is a violation of the Act. The failure of the

Respondent to fund the closed loans referenced in paragraph 7 above is thus a violation of the Act.

12. Based upon the nature of the Respondent's violations of the Act described herein, the likelihood exists that persons dealing with the Respondent may suffer irreparable harm, in that the Respondent does not have the current ability to fund any mortgage loans; therefore, these extraordinary circumstances require immediate action by the Department.

EMERGENCY ORDER

Having considered the factual allegations, the Commissioner has determined that the Respondent has violated and is violating the Act, and that circumstances warrant immediate action.

IT IS HEREBY ORDERED that the Respondent shall immediately cease and desist from engaging in business as a mortgage lender or mortgage loan broker with respect to any Tennessee consumers and/or residential real property located in Tennessee, except as expressly provided herein, until such time as the Respondent is able to satisfactorily demonstrate to the Commissioner that it is able to engage in business lawfully and within the purposes of the Act.

IT IS HEREBY FURTHER ORDERED that the Respondent shall fully comply with all of the obligations to each borrower who has a mortgage loan currently pending, approved, or closed but not funded, including, but not limited to, making every reasonable effort, at no cost to any of such borrowers, to cause such loans to be placed with another authorized mortgage loan broker or authorized mortgage lender so that the

transactions may be completed. The Respondent shall notify the Department in writing of all such efforts, and of the final resolution of each affected loan.

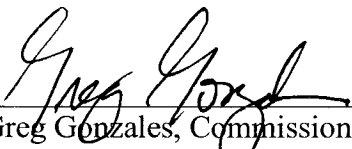
The provisions of this ORDER shall remain in full force and effect unless and until such time as any provision shall have been modified, terminated, suspended or set aside by the Commissioner, an administrative judge or any court having jurisdiction over the matters addressed herein.

RIGHTS OF THE RESPONDENT

The Respondent has the right to a hearing for the purpose of contesting and obtaining rescission of this ORDER. If a separate hearing is timely requested by the Respondent, any such hearing shall be conducted in accordance with the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101, *et seq.*, and Chapter 0180-6 of the Rules of the Department.

In order to request a hearing, the Respondent must file a written request within twenty (20) days from receipt of this ORDER. If no such written request is timely filed, then this EMERGENCY CEASE AND DESIST ORDER will be deemed final for all purposes. Any written request for a hearing must be filed with the Commissioner, Tennessee Department of Financial Institutions, Nashville City Center, 511 Union Street, 4th Floor, Nashville, TN 37219.

ISSUED this 7 day of March, 2008.



Greg Gonzales, Commissioner
Tenn. Dept. of Financial Institutions